In the Supreme Court of the United States.

OCTOBER TERM, 1903.

No. ——. Original.

EX PARTE THE UNITED STATES, PETITIONER.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS.

The petitioner in the above-entitled matter respectfully asks the court for leave to file the petition presented herewith, wherein it asks for a writ of mandamus, directed to the Hon. Francis J. Wing, judge, and H. F. Carleton, clerk, of the United States district court for the northern district of Ohio, commanding said judge to direct the entry upon the records of that court of final judgments in the causes of *The United States* v. *Jock Coe*, *The United States* v. *Bong Meng*, and *The United States* v. *Woo Joe*, and said clerk to enter the same; and further commanding said judge and clerk to file all papers relating to said causes and treat them in all respects as properly appealed from the United States commissioners to the district court, and as having been before said court for determination.

THE UNITED STATES,
By P. C. KNOX,
Attorney-General.

22923—04——1

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

No. ——. Original.

EX PARTE THE UNITED STATES, PETITIONER.

PETITION FOR MANDAMUS.

Your petitioner, The United States, respectfully represents as follows:

1. On October 3, 1903, affidavit was made before John H. Simpson, a United States commissioner for the northern district of Ohio, stating that one Jock Coe, a Chinese person, was at Cleveland, Ohio, within the United States, contrary to law. On the same day a warrant was issued commanding the marshal to apprehend Jock Coe and forthwith bring him before said commissioner, and he was likewise ordered to summon Thomas P. H. O'Neill as a witness. The warrant for arrest was immediately executed and proper return made thereon. On October 3, 7, and 14 writs of mittimus were addressed to the jailer of Cuyahoga County, Ohio. On October 26 the commissioner, having tried the case, issued a writ reciting that the defendant had been found

guilty as charged, and directing the marshal to deport him. He likewise prepared a transcript of the proceedings before him showing the action taken, including final judgment of deportation, which he indorsed thus:

> NORTHERN DISTRICT OF OHIO, *ss:*
>
> I, the undersigned, a United States commissioner for said district, do hereby certify that the within is a full and true transcript of the proceedings had by and before me in the above-named cause, and of the costs therein, as recorded in my docket 1, page 44; and that the papers numbered one to 8, inclusive, accompanying this transcript, are the original papers in said cause; all of which are herewith transmitted into the district court of the United States within and for said district.
>
> Witness my hand on this 26th day of October, 1903.
>
> JOHN H. SIMPSON,
> *U. S. Commissioner, as aforesaid.*

Notice of appeal, dated October 31, 1903, "from the finding and order" of the commissioner "to the district court of the United States in and for the northern district of Ohio and to the judge of said court," was addressed to the United States attorney, United States commissioner, clerk of the district court, and marshal.

The transcript of the proceedings before the United States commissioner was lodged with the clerk of the district court for the northern district

of Ohio, eastern division, and by him stamped, "Filed, Nov. 2, 1903, at —— o'clock —— m. H. F. Carleton, clerk," and the cause seems to have been given a number on the docket of the district court.

By a paper of November 6, 1903, entitled "Before Hon. F. J. Wing, judge of the United States district court for the northern district of Ohio," counsel entered objection to the introduction of any evidence under the charge against the defendant upon the ground that the act upon which the prosecution was based was unconstitutional and void. This paper is stamped "Filed Nov. 6, 1903, at —— o'clock —— m. H. F. Carleton, clerk." By an order of November 7, 1903, signed "Francis J. Wing, judge U. S. Dist. Ct., N. D. O.," hearing of the cause was postponed until November 13. A summons for M. M. Curtiss as a witness was issued November 25 by the clerk of the court and is stamped "Filed Nov. 28, 1903, at —— o'clock —— m. H. F. Carleton, clerk." Thereafter, as appears in the bill of exceptions, the objection and demurrer dated November 6, 1903, was sustained by Judge Wing upon the ground that section 13 of the act of Congress of September 13, 1888 (25 Stat., 476, c. 1015), was unconstitutional and void and the defendant was thereupon discharged, to which action due exception was taken. Motion for a new trial was made and overruled. A bill of exceptions reciting all the proceedings, together with the opinion of the judge, was duly settled and signed by him.

The district attorney of the United States, after the discharge of the defendant as above shown, applied to the clerk of the district court to file all the above-described papers as a part of the record of the court, and to prepare a certified transcript thereof. This the clerk, claiming to act under the advice and instruction of Hon. Francis J. Wing, declined to do. He stated, furthermore, that so many of the papers as were marked "Filed" were so marked by mistake. Thereupon the petitioner, through its attorney aforesaid, presented to Judge Wing a request in writing for an order directing the clerk to file in the district court all papers in the proceedings and make all necessary entries in regard thereto, and to prepare a certified transcript thereof, in order that a complete record of the same might be preserved and an appeal taken to this honorable court. This request was refused, the judge maintaining that the proceedings before him on appeal from the United States commissioner had been before him as judge and not before the district court, and that none of the papers showing the proceedings should be filed by the clerk.

Copies of all the above-mentioned papers are hereto attached.

2. On October 3, 1903, a Chinese person known as Bong Meng, under a warrant issued by John H. Simpson, a United States commissioner for the northern district of Ohio, was arrested and afterwards by him ordered deported. An appeal was

taken October 31, 1903, "from said finding and order of the district court of the United States in and for the northern district of Ohio and to the judge of said court," and proceedings in all respects similar to those above described in the case of *The United States* v. *Jock Coe* were had, and the results thereof were the same.

On January 16, 1904, a Chinese person known as Woo Joe, under a warrant issued by Bernard F. Brough, a United States commissioner in and for the northern district of Ohio, western division, was arrested and afterwards by him ordered deported. An appeal was taken February 25, 1904, "from said finding and order of the district court of the United States for the northern district of Ohio, and to the judge of said court," and proceedings in all respects similar to those hereinbefore described in the causes of *The United States* v. *Jock Coe* and *The United States* v. *Bong Meng* were had, and the result thereof was the same.

The papers mentioned in the two cases last referred to have not been printed, and so to do would only incumber the record. They are in all substantial particulars the same as those which are hereto annexed. The minor differences—principally in names and dates and in the number of the same which are marked "Filed" by the stamp of the clerk—are not thought to be important.

3. Since the action of Judge Wing in the foregoing causes, petitioner is advised that the United

States commissioners in and for the northern district of Ohio have felt themselves bound by the opinion holding section 13 of the act of September 13, 1888, unconstitutional, and have, for that reason, contrary to their former practice, discharged certain Chinese persons brought before them charged with being unlawfully in the United States.

Manifestly, in the present condition of affairs, it is impossible for the Government to secure deportation of Chinamen found unlawfully within the northern district of Ohio, and this unfortunate situation seems likely to continue so long as Judge Wing presides there and adheres to the views which he has heretofore expressed. It is further manifest that the action of said judge in refusing to order the sundry papers, showing the proceedings in the causes above referred to to be properly filed in the clerk's office, so as to form a part of the records thereof, makes it impossible for the Government to remove the causes into this court in the usual and orderly way, as it is advised it has a right to do.

For fifteen years Chinese persons have been deported from the United States under the provisions of the law which the honorable judge in the northern district of Ohio now holds to be unconstitutional, and many causes involving its enforcement have been tried in this court, where its provisions have been upheld.

In *Wong Wing* v. *United States* (163 U. S., 228), decided in May, 1896, the constitutionality of the act of September 13, 1888, was drawn in question, and it was held to be valid.

In the case of *Chin Bak Kan* v. *United States* (186 U. S., 193), proceedings for the deportation of a Chinaman were begun before a commissioner. An appeal was taken from his decision to the district court, and from its final order to the Supreme Court of the United States. A claim of citizenship was set up by the Chinaman and the jurisdiction of the commissioner challenged. The court sustained the law and affirmed the action of the district court in ordering deportation.

In the recent cases of *Ah How and others* v. *The United States*, decided February 23, 1904—opinion by Justice Holmes—the judgment of the district court for the eastern district of New York, affirming the action of a United States commissioner who ordered deportation of Chinese persons under proceedings in all respects similar to those begun in the northern district of Ohio in the causes now under consideration, was affirmed, a result entirely out of harmony with the view that the act of 1888 is unconstitutional, or that the proceedings upon appeal from a commissioner are to the judge and not to the district court.

Wherefore your petitioner prays that a writ of mandamus may be issued out of this court to the Hon. Francis J. Wing, judge, and H. F. Carleton,

clerk, of the district court of the United States for the northern district of Ohio, eastern division, commanding said judge to direct the entry upon the records of that court of final judgments in the above-entitled causes of *United States* v. *Jock Coe*, *United States* v. *Bong Meng*, and *United States* v. *Woo Joe*, and said clerk to enter the same; and further commanding said judge and clerk to file all of the hereinbefore-described papers relating to said causes and to treat them in all respects as properly appealed from the United States commissioners to the district court of the United States for the northern district of Ohio, eastern division, and as having been before said court for determination.

THE UNITED STATES,
By P. C. KNOX,
Attorney-General.
JOHN J. SULLIVAN,
United States Attorney for the Northern District of Ohio.

STATE OF OHIO,
County of Cuyahoga, ss:

Personally appeared before me, the undersigned officer authorized to administer oaths, John J. Sullivan, who, being duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof, and that the same are true, to the best of his knowledge, information, and belief. And he further says that he is the United States district attorney for the northern district of

Ohio, and is authorized under the law and under the direction of the Department of Justice to sign the foregoing petition.

JOHN J. SULLIVAN.

Subscribed and sworn to before me this 10th day of March, 1904.

[SEAL.] EDWIN DRAKE,
Notary Public in and for the County of Cuyahoga, State of Ohio.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Charles P. Salen, clerk of the court of common pleas, a court of record of Cuyahoga County aforesaid, do hereby certify that Edwin Drake, before whom the annexed affidavit was taken, was at the date thereof a notary public in and for said county, duly authorized by the laws of Ohio to take the same, also to take acknowledgments and proofs of deeds or conveyances for land, tenements, or hereditaments situated and lying in said State of Ohio; and further, that I am well acquainted with his handwriting and believe his signature thereto is genuine, and that the annexed instrument is executed according to the laws of the State of Ohio.

Commission expires May 22, 1904.

In testimony whereof I hereunto subscribed my name and affix the seal of said court, at Cleveland this 10th day of March, A. D. 1904.

[SEAL.] CHAS. P. SALEN, *Clerk.*

No. 1499.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

No. ——, Original.

EX PARTE THE UNITED STATES, PETITIONER.

ON PETITION FOR WRIT OF MANDAMUS.

EXHIBITS.

UNITED STATES OF AMERICA,
Northern District of Ohio ss.

Before me John H. Simpson, a United States Commissioner for the Northern District of Ohio, personally appeared this day Thomas P. H.O'Neill who being first duly sworn, deposes and says that on or about the 3″ day of October, A. D. 1903, at Cleveland, Cuyahoga County, Ohio, in said District, Jock Coe, in violation of Section 12 of the Act of July 5, 1884, of the Revised Statutes of the United States, was, being a Chinese person, found unlawfully within the boundaries of the United States of America; against the peace and dignity of the United States; and contrary to the form of the statute in such case made and provided.

Deponent further says that he has reason to believe and does believe that Thomas P. H. O'Neill, ——— ——— are material witnesses to the subject matter of this complaint.

(Deponent's signature) THOMAS P. H. O'NEILL.

Sworn to before me, and subscribed in my presence, this 3″ day of October, A. D. 1903.

JOHN H. SIMPSON
United States Commissioner as aforesaid.

The President of the United States of America, to the Marshal of the United States for the Northern District of Ohio and to his Deputies, or any or either of them:

Whereas, Thomas P. H. O'Neill has made complaint in writing under oath before me, the undersigned, a United States Commissioner for the Northern District of Ohio charging that Jock Coe late of Cleveland, Cuyahoga County, in the State of Ohio was, on or about the 3″ day of October, A. D. 1903, at Cleveland in said District, in violation of Section 12 of the act of July 5, 1884 of the Revised Statutes of the United States, being a Chinese person, found unlawfully within the boundaries of the United States; against the peace and dignity of the United States; and contrary to the form of the Statute in such case made and provided.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said ——— wherever found in your District and bring his body forthwith before me or any other Commissioner having jurisdiction of said matter, to answer the said

complaint, that he may then and there be dealt with according to law for the said offense.

Given under my hand and seal this 3″ day of October A. D. 1903.

JOHN H. SIMPSON,
United States Commissioner as aforesaid.

Approved,

———— ————,
United States Attorney.

[Indorsed.]

Return.

Received this warrant on the 3d day of Oct 1903 at Cleveland and executed the same by arresting the within-named Jock Coe at Cleveland on the 3d day of Oct., 1903, and have his body now in court, as within I am commanded.

F. M. CHANDLER,
U. S. Marshal.

Per F. M. FANNING,
Deputy.

3d day of Oct., 1903.

Service	2.00	
Fares	.06	
" s. & p	.20	
Attendance	2.00	Oct 7.
" Sampsell	2.00	

UNITED STATES OF AMERICA,
Northern District of Ohio ss.

The President of the United States of America, to the Marshal of the Northern District of Ohio Greeting:

You are hereby commanded to summon Thomas P. H. O'Neill if he be found in your bailiwick, to be and appear before me, John H. Simpson a United States Commissioner for the Northern District of Ohio aforesaid, at my office Federal Bldg. Cleveland on the 7″ day of Oct, 1903, at 8:30 o'clock A M., to give testimony, and the truth to say, in a cause pending before me, wherein the United States is complainant, and ——— defendant.

In behalf of United States

Hereof fail not, under the penalty of the law, and have you then and there this writ.

Given under my hand, this 3 day of Oct, A. D. 1903.

JOHN H. SIMPSON,
United States Commissioner as aforesaid.

[Indorsed.]

Marshal's return.

(On original writ only.)

Received this writ Oct 3, 1903, and on or before Oct 7, 1903, served the same on the within named Thos P H O'Neil by leaving a certified copy thereof with each of them personally; and on the within named ——— by leaving such copy at the usual place of residence of each of them. The other person— within named not found.

Marshal's fees and costs on this writ $56.

F. M. CHANDLER, *U. S. Marshal.*
By F. M. FANNING, *Deputy.*

UNITED STATES OF AMERICA,
Northern District of Ohio ss.

The President of the United States of America, to the Keeper of the Jail of Cuyahoga County in the State of Ohio Greeting:

Whereas, Jock Coe has been arrested upon the oath of Thomas P. H. O'Neill for having, on or about the 3 day of Oct A. D. 1903 at Cleveland in the District aforesaid, in violation of Section 12 of the Act of July 5, 1884 of the Revised Statutes of the United States, being a Chinese person, been unlawfully found within the boundaries of the United States; against the peace and dignity of the United States; and contrary to the form of the statute in such case made and provided and ha not been examined by me, John H. Simpson a United States Commissioner for said northern District of Ohio upon the aforesaid charge, and ha been required to appear before me, on the 7 day of Oct A. D. 1903, at 8:30 o'clock a m., of said day, which requisition he ha failed to comply with:

These are therefore to command you, in the name and by the authority aforesaid, to receive the said ——— prisoner of the United States of America, in the Jail of said Cuyahoga County, there to remain until he be discharged by due course of law.

Given under my hand and seal in the City and District aforesaid, this 3 day of Oct, A. D. 1903

JOHN H. SIMPSON,
United States Commissioner as aforesaid.

22923—04——2

[Indorsed.]

Return.

Received this mittimus with the within named prisoner, on the 3d day of October, A. D. 1903, and on the same day I committed the said prisoner to the custody of the jail keeper named in said mittimus, with whom I left at the same time a certified copy of this mittimus.

Dated Oct. 3, 1903.

F. M. CHANDLER,
United States Marshal No. District of Ohio.
By F. M. FANNING,
Deputy.

Temp. mitt ..... .50
Travel ..... .20
.70

UNITED STATES OF AMERICA,
Northern District of Ohio, ss.

The President of the United States of America, to the Keeper of the Jail of Cuyahoga County, in the State of Ohio, Greeting:

Whereas, Jock Coe has been arrested upon the oath of Thos. P. H. O'Neill for having, on or about the 3 day of Oct., A. D. 1903, at Cleveland in the District aforesaid, in violation of Section — of the Revised Statutes of the United States, being a Chinese person, been found unlawfully within the boundaries of the United States; against, &c., and has not been examined by me, John H. Simpson, a United States Commissioner for said Northern District of Ohio, upon the aforesaid charge, and has been required to give bail in the sum of Twenty-five Hundred no/100 Dollars

for his appearance before me, on the 26″ day of Oct., A. D. 1903, at 2.00 o'clock P. M. of said day, which requisition he has failed to comply with.

These are therefore to command you, in the name and by the authority aforesaid, to receive the said Jock Coe prisoner of the United States of America, in the Jail of said Cuyahoga County, there to remain until he be discharged by due course of law.

Given under my hand and seal, in the City and District aforesaid, this 14 day of Oct., A. D. 1903.

JOHN H. SIMPSON,
United States Commissioner as aforesaid.

[Indorsed.]

Return.

(To be made on the original writ only.)

Received this mittimus with the within-named prisoner, on the 14 day of Oct., A. D. 1903, and on the same day. I committed the said prisoner to the custody of the jail keeper named in said mittimus, with whom I left at the same time a certified copy of this mittimus.

Dated Oct. 14, 1903.

F. M. CHANDLER,
United States Marshal N. District of O.
By F. M. FANNING, *Deputy.*

Service	.50
Travel S. & P	.20
Attendance	2.00
	2.70

UNITED STATES OF AMERICA,
Northern District of Ohio ss.

The President of the United Slates of America, to the Keeper of the Jail of Cuyahoga County in the State of Ohio greeting:

Whereas, Jock Coe has heen arrested upon the oath of Thos. H. P. O'Neill for having, on or about the 3″ day of October A. D. 1903 at Cleveland, Ohio, in the District aforesaid, in violation of Section 12 of the Act of July 5, 1884 of the Revised Statutes of the United States, being a Chinese person, been found unlawfully within the boundaries of the United States of America; against the peace and dignity of the United States; and contrary to the form of the statute in such case made and provided, and has not been examined by me, John H. Simpson a United States Commissioner for said Northern District of Ohio upon the aforesaid charge, and has been required to appear before me, on the 14″ day of October A. D. 1903, at 11:00 o'clock A. M., of said day, which requisition he ha failed to comply with:

These are therefore to command you, in the name and by the authority aforesaid, to receive the said Jock Coe prisoner of the United States of America, in the Jail of said Cuyahoga County, there to remain until he be discharged by due course of law.

Given under my hand and seal in the City and District aforesaid, this 7″ day of October, A. D. 1903

JOHN H. SIMPSON,
United States Commissioner as aforesaid.

[Indorsed.]

Return.

Received this mittimus with the within named Prisoner , on the 7th day of October A. D. 1903, and on the same day I committed the said Prisoner to the custody of the Jail Keeper named in said Mittimus, with whom I left at the same time a certified copy of this Mittimus.

Dated Oct 7 190

F. M. CHANDLER
United States Marshal, No. District of Ohio.
By F. M. FANNING
Deputy.

Mitt ..... .50
Travel ..... .20
.70

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The President of the United States of America to the marshal of the northern district of Ohio, and to the keeper of the jail of Cuyahoga County in the State of Ohio, greeting:

Whereas Jock Coe has been arrested upon the oath of Thomas P. H. O'Neill for having, on or about the 3 day of Oct., 1903, in said district, in violation of section — of the Revised Statutes of the United States, being a Chinese person, been found unlawfully within the boundaries of the United States, against, &c.

And, after an examination being this day had by me, it appearing to me that said offense had been committed, and probable cause being shown to believe said Jock Coe committed said offense as charged, I have directed that said Jock Coe

committed to the keeping of the United States marshal for the northern district of Ohio to be deported to China.

Now, these are therefore, in the name and by the authority aforesaid, to command you, the said marshal, to commit the said Jock Coe to the custody of the keeper of said jail of Cuyahoga County and to leave with said jailer a certified copy of this writ; and to command you, the keeper of said jail of said county, to receive the said Jock Coe, prisoner of the United States of America, into your custody, in said jail, and him there safely to keep until he be deported.

In witness whereof I have hereto set my hand and seal at my office, in said district, this 26 day of Oct., A. D. 1903.

JOHN H. SIMPSON,
United States Commissioner
for said Northern District of Ohio.

[Indorsed.]

Return.

(To be made on the original writ only.)

Received this mittimus with the within-named prisoner, on the 26 day of Oct., A. D. 1903, and on the same day I committed the said prisoner to the custody of the jail keeper named in said mittimus, with whom I left at the same time a certified copy of this mittimus.

Dated Oct. 26, 1903.

F. M. CHANDLER,
United States Marshal N. District of Ohio.
By F. M. FANNING, *Deputy.*

Committing	.50
Travel s. & p	.20
Attendance	2.00
	$2.70

UNITED STATES OF AMERICA
vs.
JOCK COE DEFENDANT. } No. 23

UNITED STATES OF AMERICA,
Northern District of Ohio ss.

Before me, John H. Simpson a United States Commissioner for said District, complaint and affidavit was made on this 3d day of Oct 1903, by Thomas P. H. O'Neill charging in substance that on or about the 3d day of Oct 1903, at Cleveland in said District, the defendant, Jock Coe in violation of Section 12 of the Act of July 5, 1884 of the Revised Statutes of the United States, being a Chinese person, was found unlawfully within the boundaries of the United States.

Complaint approved by U. S. District Attorney on ——— 19—.

On Oct 3 1903, issued warrant to F. M. Chandler U. S. Marshal, returnable before me.

On Oct 26 1903, warrant returned, indorsed in substance as follows: Recd Oct 3, 1903 and same day arrested deft. at Cleveland and have body in court, F. M. Chandler, U. S. Marshal, Per F. M. Fanning, Deputy.

On Oct 3 1903, issued subpena for the following witnesses in behalf of U. S.: Thomas P. H. O'Neill.

On Oct 7 1903, said subpena was returned, indorsed in substance as follows: Recd. Oct 3, 1903 and on or before Oct 7, 1903 served same Thomas P. H. O'Neill by leaving with him personally a true copy thereof, F. M. Chandler, U. S. Marshal By F. M. Fanning, Deputy. Fees 56c.

On ——— 19—, issued subpena for the following witnesses in behalf of U. S.: ———

On ——— 19—, said subpena was returned, indorsed in substance as follows: ———

On Oct 3 1903, issued temporary mittimus committing defendant to the jail of Cuyahoga county Ohio pending examination.

On Oct 3 1903, temporary mittimus returned, indorsed in substance as follows: Recd. Oct 3, 1903 and same day committed prisoner to jail keeper named with whom I left certified copy hereof, Oct 3, 1903, F. M. Chandler, U. S. Marshal, North. Dist. of Ohio By F. M. Fanning, Deputy. Fees 70c.

On Oct 7 1903, defendant was brought before me, the said Commissioner, at my office, in the City of Cleveland in said District, by F. M. Fanning Deputy U. S. Marshal; and the complaint was then and there fully read and explained to the said defendant, who thereupon, for plea, said he is "not guilty" as charged in the said complaint.

And thereupon, in preliminary trial to determine whether there exists probable ground to believe said defendant guilty as charged, the following witnesses were sworn and examined on the part of the plaintiff ——— ———.

And thereupon, on motion to that effect, made by the defendant, this hearing was continued until the 14th day of Oct 1903, and said defendant was required to give bond, pending examination, in the sum of ——— dollars, which he did —— do.

On Oct 7 1903, issued temporary mittimus committing defendant to the jail of Cuyahoga County, Ohio pending examination.

On Oct 7 1903, said mittimus was returned, indorsed in substance as follows: "Received this mittimus with the within named prisoner, on the 7th day of Oct 1903, and on the same day I com-

mitted the said prisoner to the custody of the jail keeper named in said mittimus, with whom I left at the same time a certified copy of this mittimus.

F. M. Chandler U. S. Marshal, Northern District of Ohio By F. M. Chandler, Deputy." Fees 70c.

*See below.

On Oct 26 1903, pursuant to the continuance of 14 1903, defendant was brought before me, the said Commissioner, at my said office, in said district, by F. M. Fanning Deputy U. S. Marshal; and, the defendant being present, the following witnesses were sworn and examined on the part of the Plaintiff S. F. Moy.

And, from the evidence of the said witnesses, it appearing to me, the Commissioner, that the laws of the United States have been violated, as charged in the complaint, and that there is —— probable cause shown to believe the defendant guilty of the alleged offense, it was ordered that he be deported to China as appears more fully in my order findings and judgment attached hereto, marked Exhibit A, and made part hereof.

And the following witnesses were recognized to appear at said term of court ——— ———.

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*On Oct. 14, 1903, pursuant to continuance of Oct. 7, 1903, defendant was brought before me the said commissioner at my said office in said district by F. M. Fanning, deputy U. S. marshal.

And thereupon, upon motion to that effect made by defendant, this hearing was continued until the 26th day of October, A. D., 1903, and said defendant was required to give bond, pending examination, in sum of $2,500.00, which he did not do.

On Oct. 14, 1903, in default of said bond, issued temporary mittimus, committing defendant to jail of Cuyahoga County, Ohio, pending examination.

On Oct. 14, 1903, said mittimus was returned indorsed in substance as follows: Recd. Oct. 14, 1903, with the within-named prisoner, and same day committed prisoner to custody of jail keeper named, with whom I left certified copy hereof. F. M. Chandler, U. S. marshal, northern district of Ohio. By F. M. Fanning, deputy. Fees, $2.70.

And the defendant, committed to the jail of Cuyahoga County, Ohio there to remain until deported, as further evidenced by the return on said mittimus, which is in substance as follows: "Received this mittimus with the within named prisoner, on the 26th day of Oct 1903, and on the same day I committed the said prisoner to the custody of the jail keeper named in said mittimus, with whom I left at the same time a certified copy of this mittimus F. M. Chandler, U. S. Marshal, Northern District of Ohio By F. M. Fanning, Deputy."

And thereupon the said defendant gave bond in the said sum of ——— dollars for his appearance at the said time and place, with ———

Oct. 31, 1903 Deft. filed notice of appeal, which is filed herewith.

On ——— 19—, said ——— applied for discharge under section 1042 U. S. Rev. Stat.; and on hearing of said application and the testimony produced, said ——— was ——— discharged accordingly.

Witnesses in above case:

S. F. Moy, Buffalo, New York, Official Interpreter.

Thomas P. H. O'Neill, Cleveland, Ohio, Chinese Inspector.

Fees of U. S. Commissioner.

(See Act of May 28, 1896.)

	$ cts.
Drawing complaint, with oath and jurat to same, 50c..	50
Copy of complaint, with certificate to same, 30c	
Issuing warrant of arrest, 75c.; Ent. return, 15c	90
Issuing subpena or subpenas in said case, 25c.; with 5c. for each of.....witnesses in addition to the first,.....cts.; Entering return, 15c.....	40

	$ cts.
Drawing temporary bond of defendant and sureties, taking acknowledgment of same and justification of sureties, 75c	
Issuing temporary commitment and making copy of same, $1.00; Entering return, 15c	1 15
Same	1 15
Same	1 15
Administering oaths to 1 U. S. witnesses on trial, 10c. each	10
Hearing and deciding on criminal charges on the 7 day of Oct 1903, and reducing the testimony to writing when required by law or order of court, per diem, $5.00	5 00
Same Oct. 14, 1903	
Same, for one additional day on the 26th day of Oct 1903, because the hearing could not be completed in one day, per diem, $5.00	5 00
Drawing bond of defendant and sureties, taking acknowledgment of same, and justification of sureties, 75c	
Issuing commitment and making copy of same, $1.00; Entering return, 15c	1 15
Recognizance of all witnesses in the case, defendant being held for court, 50c	
Oath to.....U. S. witnesses as to attendance and travel, 5c. each	
Order, in duplicate, to pay first witness on behalf U. S., 30c., and 5c. for each of.....additional U. S. witnesses,.....cts	
Transcript of proceedings, required by order of court, and transmission of papers to co'rt, 60c	60
Copy of warrant of arrest, with certificate to same, when defendant is held for court and original papers are not sent to court, 40c	
Examination and certificate in cases of application for discharge of poor convict (under §1042 R. S.), and all services connected therewith in case vs....$3.00	
	17 10

EXHIBIT A.—*John H. Simpson U. S. Commr*

United States of America Northern District of Ohio:

Before John H. Simpson, United States commissioner for the northern district of Ohio:

THE UNITED STATES
against
JOCK COE

Whereas, Jock Coe stands charged on oath before me, John H. Simpson, a Commissioner duly authorized and empowered by the District Court of the United States in and for the Northern District of Ohio, to execute all the powers and perform all the duties conferred, required or authorized by any Act of Congress now in force, or which may hereafter be passed as follows, to-wit:

That within the jurisdiction of the United States aforesaid and of this Honorable Court, and after the passage by the Congress of the United States of an Act entitled "An Act to prohibit the coming of Chinese laborers to the United States." (Approved September 13, 1888.)

He, the said Jock Coe did come into the United States from a foreign place, and having come, has remained within the United States; that the said Jock Coe has been found, and now is unlawfully within the United States, and that at all the times herein mentioned, the said Jock Coe is, and was a Chinese laborer; and

Whereas, the said Jock Coe was duly apprehended upon said charge in the Northern District of Ohio; and

Whereas, an examination was thereupon had by me of said Jock Coe upon the said charge, from

which examination and from the evidence adduced before me, it appears to me that the said Jock Coe is by race, language, color and dress, a Chinese person, and a laborer by occupation; and

Whereas, said Jock Coe has failed to establish, by affirmative proof to my satisfaction, his lawful right to remain in the United States; and

Whereas, said Jock Coe has not made it appear to me that he is a subject or a citizen of any other country than China; and

Whereas, from the foregoing facts, I find and adjudge said Jock Coe to be unlawfully within the United States:

Now, therefore, I order that said Jock Coe be removed from the United States to China, and I further order that said Jock Coe be, and he is hereby committed to the United States Marshal for the Northern District of Ohio for the purpose aforesaid.

Cleveland, Ohio, October 26 1903.

JOHN H. SIMPSON
Commissioner of U. S. District Court
for the Northern District of Ohio.

[Indorsed.]

2982

Form 9.

U. S. Commissioner's Transcript.

THE UNITED STATES OF AMERICA
vs.
JOCK COE

Transcript of proceedings

Before John H. Simpson United States Commissioner for the Northern Dist. of Ohio.

Certificate.

THE UNITED STATES OF AMERICA,
Northern District of Ohio ss.

I, the undersigned, a United States Commissioner for said District, do hereby certify that the within is a full and true Transcript of the proceedings had by and before me in the above-named cause, and of the costs therein, as recorded in my docket 1, page 44; and that the papers numbered one to 8 inclusive, accompanying this transcript, are the original papers in said cause; all of which are herewith transmitted into the District Court of the United States, within and for said District.

Witness my hand on this 26th day of October 1903.

JOHN H. SIMPSON
U. S. Commissioner as aforesaid.

Returned into court and filed this —— day of ——— 19—.

Filed Nov 2 1903 at —— o'clock —— m. H. F. Carleton, Clerk.

The United States of America, Northern District of Ohio.

Before John H. Simpson, United States Commissioner for the Northern District of Ohio.

THE UNITED STATES,
vs
JOCK COE, DEFT. } Notice of appeal.

To Honorable John J. Sullivan, U. S. District Attorney, John H. Simpson, U. S. Commissioner, W. F. Carleton, Clerk of the U. S. District Court and F. M. Chandler U. S. Marshall, all in and for the Northern District of Ohio.

You will please take notice that Jock Coe, charged and examined by and before John H.

Simpson United States Commissioner in and for the Northern District of Ohio, and by him under the complaint therein, on the 26th day of October, A. D. 1903, found and adjudged guilty of being unlawfully within the United States and ordered deported therefrom to the Empire of China, hereby appeals from said finding and order to the District Court of the United States in and for the Northern District of Ohio, and to the Judge of said Court.

You will further take notice that said appeal is taken on questions of both law and fact.

Dated October 31, 1903.

VESSY DAVIS & MANAK,
Attorneys for Defendant.

STATE OF OHIO,
Cuyahoga County, ss.

Before Hon. F. J. Wing, Judge of the United States District Court for the Northern District of Ohio.

THE UNITED STATES OF AMERICA, PLFF.
vs.
CHICK CHONG, DEFT.

The defendant objects to the introduction of any evidence under the charge herein on the ground that said act upon which said prosecution is based is unconstitutional and void in this to wit:

That said act is in contravention of Article III, Section 2 of the Constitution of the United States; also that said act is in contravention of Article VI of said Constitution.

CHICK CHONG
By VESSY DAVIS & MANAK
his Attys.

[Indorsed.]

THE UNITED STATES
vs.
CHICK CHONG ALIAS JOCK COE. } 2982.

Demurrer.

Filed Nov. 6, 1903, at —— o'clock —— M. H. F. Carleton, Clerk.

VESSY DAVIS & MANAK
his Attys.

THE UNITED STATES,
vs.
JOCK COE. } No. 2982. Law.

This day came the United States Attorney on behalf of the United States, and came also Jock Coe at the bar of Court, and this cause came on to be heard upon an Appeal from the United States Commissioner's Decision ordering that said Jock Coe be deported, and upon application of the United States Attorney, and for good cause shown, further proceedings in this cause are postponed until Friday, November 13th, 1903, at ten o'clock A. M.

It is thereupon ordered that said Jock Coe enter into a recognizance in the sum of $200 for his appearance here in this Court from day to day during the present term, and from term to term thereafter, and thereupon said Jock Coe as principal and Frank Manak as surety entered into the required recognizance.

"O. K." FRANCIS J. WING,
Judg. U. S. Dist. Ct., N. D. O.

November 7th, 1903.

[Indorsed.]

THE UNITED STATES, *vs.* JOCK COE. } 2982.

Order.

Form No. 145.

Præcipe for subpœna in a case.

In the District Court, United States, Northern District of Ohio.

THE UNITED STATES *vs.* JOCK COE. } No. 2982.

The Cierk of said Court will issue Subpœna for the following-named persons to appear before said Court, at the United States Court Rooms, in Cleveland, O., at 10.30 o'clock, A. M., on the 27th day of November, 1903, then and there to testify in behalf of the United States.

Names: Professor M. M. Curtis, 43 Adelbert St.

This 25th day of November, 1903.

JOHN J. SULLIVAN,
U. S. Attorney.

(See Sec. 829, R. S. U. S.)

[Indorsed.]

United States District Court N. District of Ohio, October Term, 1903.

THE UNITED STATES
vs.
JOCK COE. } 2982.

Filed Nov. 25, 1903, at —— o'clock —— M. H. F. Carleton, clerk.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss.

The President of the United States of America to Professor M. M. Curtis, 43 Adelbert st.

You are hereby commanded that, laying aside all and singular your business and excuses, you be and appear in the district court of the United States for the northern district of Ohio at the court-house in the city of Cleveland, in said district, on the 27th day of November, A. D. 1903, at 10.30 o'clock a. m. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the court without leave thereof or of the district attorney.

Hereof fail not, under penalty of what may befall you thereon.

Witness, the Honorable Francis J. Wing, judge of the said district court of the United States, this 25th day of November, A. D. 1903, and in the 128th year of the Independence of the United States.

[SEAL.] H. F. CARLETON, *Clerk*,
By F. J. DENZLER, *Deputy Clerk*.

[Indorsed.]

U. S. Marshal's No. 985.

No. 2982. District court of the United States for the northern district of Ohio.

United States subpœna.

THE UNITED STATES
vs.
JOCK COE.

Returnable November 27th, 1903.

Returned and filed.

Filed Nov. 28, 1903, at —— o'clock, —— m.

H. F. Carleton, clerk.

John J. Sullivan, U. S. Attorney.

U. S. Marshal's return.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss.

Received this writ at Cleveland, Ohio, on Nov. 25th, 1903, and on the same day and place I served the same by delivering a true and certified copy hereof with all endorsements thereon to the within-named Professor M. M. Curtis, personally.

F. M. CHANDLER, *U. S. Marshal,*
By F. M. FANING, *Deputy.*

Fees.

Service	$0.50
Travel	.24
Total	$0.74

The United States of America, Northern District of Ohio, eastern division, *ss.*

Before Francis J. Wing, U. S. District Judge.

THE UNITED STATES OF AMERICA, plaintiff, *v.* JOCK COE, DEFENDANT.	Bill of exceptions.

Be it remembered, That on the 27th day of November, 1903, before me, Francis J. Wing, Judge of the District Court of the United States for the Northern District of Ohio, this cause, on appeal from the order and judgment of John H. Simpson, United States Commissioner for said District, came on regularly for trial, Messrs. Vessey, Davis & Manak appearing for the defendant, and John J. Sullivan, United States Attorney for said District, appearing on behalf of the United States, whereupon the record on said appeal showed and proved the following facts, to-wit:—

On the third day of October, 1903, a complaint was duly sworn to and verified by one Thomas P. H. O'Neill before said John H. Simpson, United States Commissioner, alleging that said defendant was a Chinese person, and did, on the third day of October, 1903, come into the United States from a foreign place, and was unlawfully within the United States, contrary to the form of the statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

That thereupon, a warrant in due form was issued by said Commissioner for the arrest of said defendant, commanding the Marshal of said District to bring him forthwith before said Commissioner.

That said Marshal, pursuant to said warrant, arrested the defendant herein on the third day of October, 1903, and brought him before said Commissioner.

That on the 26th day of October, 1903, a trial of said defendant upon said complaint was had before said Commissioner at his office in the City of Cleveland, State of Ohio, John J. Sullivan, United States Attorney, appearing on behalf of the United States, and Messrs. Vessey, Davis & Manak appearing on behalf of the defendant, whereupon witnesses on behalf of the United States were examined and testified, and the cause submitted to the Commissioner for his decision.

That on the 26th day of October, 1903, the said Commissioner gave, made and filed, in writing, his findings, order and judgment in said cause, wherein and whereby said Commissioner did expressly find that at the time of filing said complaint, and of the rendition of said judgment, said defendant was, by race, language, color and dress, a Chinese person, and that said defendant had failed to establish, by affirmative proof, his lawful right to remain in the United States; and said Commissioner did find and adjudge said defendant to be unlawfully within the United States, and did order that said defendant be removed from the United States to China, it not appearing that he was subject or a citizen of any other country than China, and said defendant was committed to the custody of the United States Marshal for said District.

That thereafter, to-wit: on the 31st day of October, 1903, said defendant duly appealed from said findings, order and judgment of said Commissioner, to me, Francis J. Wing, United States District Judge.

That, on the 27th day of November, 1903, said cause, on appeal, as aforesaid, came on regularly for hearing before me, sitting as said Judge, whereupon the following proceedings were had:—

The said defendant objected and demurred, by his counsel, to the introduction of any testimony under the charge, on the ground that the Act on which the prosecution is based is unconstitutional and void, being in contravention of Article Three (3), Section Two (2) of the Constitution of the United States, and of Section Seven (7) of the Amendments to the same.

The objection and demurrer was thereupon sustained by the Judge, to which ruling the plaintiff, the United States of America, by its Attorney, then and there duly excepted.

The United States of America, Northern District of Ohio, eastern division, *ss.*

Before Francis J. Wing, U. S. District Judge.

THE UNITED STATES OF AMERICA, plaintiff, *v.* JOCK COE, DEFENDANT.	Opinion of Francis J. Wing, U. S. District Judge.

Section 13 of the Act of September 13, 1888, upon which this prosecution is based, provides that, upon the filing of an affidavit which charges that a person is a Chinese person, or person of Chinese descent, and that he is unlawfully in the country, a warrant may issue for the arrest of such person. Such process is operative not alone against Chinese persons, but against any person in the community, within the meaning of that word as used in the Constitution. Such person, under

the provisions of the Act, is then brought before a Commissioner, and tried upon the issues raised by the allegations of the affidavit. If found guilty, the Commissioner is empowered to make an order of deportation, the effect of which will be to remove such person to China.

In each of the causes which have been decided by the Supreme Court of the United States, under this Act, the record has shown that the person objecting to the constitutionality of the Act was admittedly a person of Chinese descent. The consideration which I have given to the Act is from the standpoint of those other than Chinese persons, who are entitled to the protections guaranteed by the Constitution, and who are the real objects of the inherent menace of prosecutions of this character.

While it may be readily understood that it rests within the sovereign power of the Government to exclude aliens, and prevent their entry into the country, and that such exclusion of an ascertained or admitted alien in no way violates any of the provisions of the Constitution, it is also easy to be recognized that, to arrest and put upon trial any person within the body of the country, by the process of affidavit and warrant, in the manner provided by the statute, upon the charge that such person is a prohibited alien, and therefore subject to the penalty of deportation,—which would be banishment if the person is a citizen,—is an encroachment upon such person's constitutional rights, unless it be assumed that the mere fact of arrest is conclusive proof that the person arrested is such prohibited alien.

I therefore hold that so much of the Act of September 13, 1888, as provides for arrest and trial

before a Commissioner, or on appeal to a Federal Judge, upon the filing of an affidavit, is unconstitutional, because the Act in no wise provides for those protections guaranteed by the Constitution to persons within the United States.

FRANCIS J. WING,
U. S. Dist. Judge, N. D. O.

Thereupon, counsel for the defendant herein moved for an order discharging the defendant, on the ground of the unconstitutionality of the Act, as aforesaid, which motion was thereupon granted by the Judge, and the said defendant was ordered discharged; to which ruling of the Judge granting said motion, and order discharging said defendant, the United States, by its Attorney, then and there duly excepted.

Thereupon the United States duly filed its motion for a new trial, which is a part of the record herein, for the reasons and upon the grounds in said motion stated, which motion was overruled by the Judge, to which ruling of the Judge the United States, by its Attorney, then and there duly excepted.

Thereafter, judgment accordingly was regularly entered herein, to which judgment the United States, by its Attorney, duly excepted.

And now, that the foregoing matters may be made a part of the record, the undersigned, Judge of said Court, at the request of the plaintiff, The United States of America, doth hereby allow, settle and sign, within the time allowed by law, the foregoing Bill of Exceptions, and orders the same to be filed.

FRANCIS J. WING,
United States District Judge.

[Indorsed.]

Before Francis J. Wing, U. S. district judge, Northern District of Ohio.

THE UNITED STATES OF AMERICA,
plaintiff,
v.
JOCK COE, DEFENDANT.

Bill of exceptions.

The United States of America, northern district of Ohio, eastern division.

Before the Hon. Francis J. Wing, U. S. district judge.

THE UNITED STATES OF AMERICA, plaintiff,
vs.
JOCK COE, DEFENDANT.
} No. 2982. Motion for new trial.

Now comes the plaintiff, the United States of America, by John J. Sullivan, United States Attorney, and asks that a new trial be granted on the following grounds and reasons, to-wit:

1. That the Judge erred in excluding evidence offered by the Government.

2. That the Judge erred in sustaining the objection and demurrer made by the defendant, to the introduction of any testimony under the charge, on the ground that the Act on which the prosecution is based is unconstitutional and void, being in contravention of Article 3, Section 2 of the Constitution of the United States, and Section 7 of the amendments to the same.

3. That the Judge erred in holding that so much of the Act of September 13, 1888, as provides for arrest and trial before a Commissioner, or on appeal to a Federal Judge, upon the filing of an affidavit is unconstitutional.

4. That the Judge erred in sustaining the motion to discharge the defendant, and in discharging the defendant.

5. That the judgment of discharge was contrary to law.

6. And for other errors apparent on the record.

JOHN J. SULLIVAN,
United States Attorney,
Northern District of Ohio.

[Indorsed.]

No. 2982.

The United States of America, northern district of Ohio, eastern division.

Before the Hon. Francis J. Wing, U. S. district judge.

THE UNITED STATES OF AMERICA, plaintiff,
vs.
JOCK COE, DEFENDANT.

Motion for new trial.

Filed Dec. 1, 1903, at —— o'clock —— m. H. F. Carleton, clerk.

John J. Sullivan, U. S. Attorney.

The United States of America, northern district of Ohio, eastern division, *ss:*

Before Francis J. Wing, U. S. district judge.

THE UNITED STATES OF AMERICA, plaintiff, *vs.* JOCK COE, DEFENDANT. } Petition for order.

Now comes the United States of America, by John J. Sullivan, United States Attorney, and asks for an order from this Honorable Judge, directing the Clerk of the District Court for the Northern District of Ohio, to file all the papers in this proceeding and make all necessary entries in regard thereto, in order that an appeal may be taken therein to the Supreme Court of the United States, and further directing said Clerk to make up and certify, as Clerk, a complete transcript of the record in this proceeding.

As reason for the granting of said petition it is respectfully represented:

1. That the Clerk of said Court now refuses to file said papers, or make a transcript of the record herein.

2. That it is necessary for the proper administration of justice and for the securing of a hearing of this proceeding in the Supreme Court of the United States, that a properly certified transcript of the proceedings already had, be made.

3. Attention is directed to the fact that four cases, in which the Supreme Court of the United States on Feb. 23, 1904, rendered its decisions, in cases similar to this proceeding, and in which said cases the Clerk of the District Court of the United

States of the Eastern District of New York, certified to the proceedings had in that Court and before the Judge thereof, in the manner in which it is now asked that the said Clerk be directed to act.

Copies of the transcript in those cases and also the opinion of the Supreme Court are herewith presented.

March 2, 1904

JOHN J. SULLIVAN,
United States Attorney,
Northern District of Ohio,
Attorney for Plaintiff.

The above motion is overruled to which ruling, the plaintiff the United States of America, excepts.

FRANCIS J. WING
U. S. District Judge of the
North. District of Ohio

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